Tentative Rulings for August 26, 2015
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

15CECG01699 ***First Mutual Group LP vs. Anneka Hall Appraisals*** **Dept. 503**

15CECG01493 ***CNH Industrial Capital America LLC vs. B & A International Farm Labor Services*** **Dept. 501**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

14CECG00656 ***AGI Publishing, Inc. v. AT&T, Inc.*** **is continued to Tuesday, September 15, 2015 at 3:30 p.m. in Dept. 402.**

15CECG00900 ***Leon et al. v. Gusaran et al.*** **is continued to Thursday, September 3, 2015 at 3:30 p.m. in Dept. 503.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

Tentative Rulings for Department 403

(23)

Tentative Ruling

Re: ***In re Raymond Sandoval III***
Superior Court Case No. 14CECG01681

Hearing Date: Wednesday, August 26, 2015 (**Dept. 403**)

Motion: First Amended Petition to Compromise a Minor's Claim

Tentative Ruling:

To deny without prejudice. Petitioner must file a second amended petition, with appropriate supporting papers, and proposed orders, and obtain a new hearing date for consideration of the second amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

If any oral argument is requested, it will be entertained August 27, 2015 at 3:30 p.m. in Department 403.

Explanation:

At Petition 2c, Petitioner states that Claimant is currently 3 years of age. However, based on the birthdate listed in Petition 2b, the Court calculates that Claimant is actually 4 years old.

In Attachment 9, Petitioner has not only included photocopies of the relevant doctors' reports containing a diagnosis of, and prognosis for, Claimant's injuries and a recent report of the Claimant's present condition, Petitioner has also included photocopies of Claimant's certificate of live birth, medical bills, various medical progress notes and other documents from Claimant's medical records, and various other documents tangentially, but not directly, related to Claimant's injuries. These extra documents are unnecessary and just cause the Petition to be bulky and unmanageable. Therefore, when Petitioner files her second amended petition, Petitioner is ordered to only include the doctors' reports containing a diagnosis of, and prognosis for, Claimant's injuries and the recent report of the Claimant's present condition in Attachment 9.

Petitioner has failed to state the terms of the settlement at Petition 11c. Rather, Petitioner states that the settlement is a "structured settlement" and attaches the terms and conditions of the single-premium structured annuity at Attachment 11. However, the proposed distribution of the settlement proceeds is not the terms of the settlement between Claimant and his father's insurance company.

At Petition 13b(4), Petitioner states that she is entitled to a reduction of the Medi-Cal lien pursuant to Welfare and Institutions Code section 14124.76. However, in the August 11, 2015 supplemental declaration of M. Jacqueline Yates, Claimant's attorney, Ms. Yates states that Medi-Cal has now agreed to reduce its lien to $25,000.00. Therefore, when Petitioner files her second amended petition, Petitioner must properly fill out Petition 13b(4)(c) and attach a copy of the final Medi-Cal demand letter or letter agreement as Attachment 13b(4).

Counsel has failed to provide any response to Petition 14. If Counsel is not seeking attorney's fees or reimbursement for costs, then Counsel should write a "0" in each box. By leaving the box blank, the Court is unclear if the item was simply missed or if no fees or costs are sought.

While Petitioner has affixed Attachment 19b(3) to the Petition, this attachment contains medical bills. Attachment 19b(3) is supposed to contain the terms and conditions of the single-premium deferred annuity, not medical bills.

The terms and conditions of the single-premium deferred annuity are included in Attachment 19. However, while Attachment 19 makes it clear that the signal-premium deferred annuity will be purchased from Berkshire Hathaway Life Insurance Company of Nebraska, Petitioner has failed to state Berkshire Hathaway Life Insurance Company of Nebraska's address in Attachment 19.

Petitioner has failed to provide a response to Order Approving Compromise 2b.

At Order Approving Compromise 7c(1)(c)(i), Petitioner requests that the Court approve sending a check to Medi-Cal for $2,405.29, but the order also states that this amount was already paid or advanced by Mid-Century Insurance on behalf of Claimant. Hence, the Court is confused about whether Petitioner is attempting to send a second payment to Medi-Cal so that Medi-Cal will reimburse Mid-Century Insurance for the original payment or if Petitioner wishes the Court to approve reimbursing Mid-Century Insurance for the payment it made to Medi-Cal on behalf of Claimant. If Petitioner wants the Court to approve a second payment, then Petitioner should keep the request for the $2,405.29 check to be paid to Medi-Cal at Order Approving Compromise 7c(1)(c)(i). However, if Petitioner wants the Court to reimburse Mid-Century Insurance for the Medi-Cal payment, then Petitioner must list the request for reimbursement at Petition 13b(2) and at Order Approving Compromise 7c(1)(d).

Petitioner improperly marked both Order Approving Compromise 9a and 9b. However, Petitioner can only choose and mark one option from Order Approving 9a, 9b, or 9c.

Petitioner has failed to provide a proper answer to Order Approving Compromise 10. If Petitioner determines that a bond is not required, then Petitioner must mark the box next to the words "not required." If a bond is required, then Petitioner must mark the box next to the word "ordered" and provide the amount of the desired bond.

In order to protect the minor's best interests, the Court requires Counsel to continue to add an additional order to Petition 21 and Order Approving Compromise 12. The requested order should state: "The payments called for under the single-premium deferred annuity cannot be accelerated, deferred, or increased, nor may the minor anticipate, sell, transfer, assign, or encumber any of the said annuity payments upon achieving majority or otherwise."

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 08/26/15 .
(Judge's initials) (Date)

(29) **Tentative Ruling**

Re: ***The State of California v. Sun Maid Furniture***
Superior Court Case No. 14CECG03612

Hearing Date: **August 26, 2015 (Dept. 403)**
Motion: Plaintiff's motion for order of possession
Tentative Ruling: To grant.
If any oral argument is requested, it will be entertained August 27, 2015, at 3:30 p.m. in Department 403.

Explanation:

Code of Civil Procedure Section 1255.410, subdivision (c) requires a plaintiff to set the hearing for possession of unoccupied property not less than 60 days after service of the motion. If the motion is not opposed within 30 days of that service, the Court shall make an order for possession if it finds that: (1) the plaintiff is entitled to take the property by eminent domain; and (2) the plaintiff has deposited the appropriate amount pursuant to Code of Civil Procedure Section 1255.010. (Code Civ. Proc. §1255.410(d)(1).) If any defendant opposes the motion, the Court must make these same two findings, as well as apply a balancing test, and find that there is "an overriding need for the plaintiff to possess the property prior to the issuance of final judgment in the case, and [that] the plaintiff will suffer a substantial hardship if the application for possession is denied or limited" in order to grant the motion. (Code Civ. Proc. §1255.410(d)(2).)

In the case at bar, Defendant opposes Plaintiff's motion based on: (1) Plaintiff's alleged failure to meet all statutory requirements, specifically those set forth in Code of Civil Procedure section 1263.025(a); and (2) hardship Defendant will suffer if Plaintiff's motion is granted.

Code of Civil Procedure section 1263.025, subdivision (a), provides, in pertinent part:

> A public entity shall offer to pay the reasonable costs, not to exceed five thousand dollars ($5,000), of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property.

(CCP §1263.025(a).)

1. Defendant argues that Plaintiff is required by statute to remit $5,000 to Defendant prior to acquiring an order of possession. The indicated statute, however, sets forth a *reimbursement* requirement. That is, where a defendant is dissatisfied with a public agency's appraisal of defendant's property, the defendant may order his or her own appraisal and then apply to the public agency for reimbursement, up to $5,000.

Here, Defendant has not submitted evidence of an appraisal it had done and paid for, nor of an application to Plaintiff for reimbursement thereof.

Defendant also states it will suffer hardship if Plaintiff's motion is granted, however Defendant provides in its opposition no support for this claim.

Plaintiff's motion satisfies the statutory requirements. The declaration of Hugo Mejia establishes that plaintiff is entitled to take the property by eminent domain, and Plaintiff has filed a notice of deposit of the appraised value of the property with the State Treasurer.

The declaration of Hugo Mejia establishes also that Plaintiff will suffer a severe hardship if it does not have an order for possession by September 8, 2015. Any delay in obtaining possession of Defendant's property will have a domino effect on the rest of the first phase of construction of the High Speed Rail Project ("Project"), which will in turn delay all subsequent phases of the Project. This establishes an overriding need for Plaintiff to possess the property prior to the issuance of final judgment. (Code Civ. Proc. §1255.410(d)(2).) Accordingly, Plaintiff's motion is granted. The Court will sign the form order submitted by Plaintiff.

Pursuant to California Rules of Court, rule 3.1312, and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling

Issued By: KCK on 08/26/15 .
(Judge's initials) (Date)

Tentative Rulings for Department 501

(5)

Tentative Ruling

Re: ***DePauuw et al. v. A&M Auto et al.***
Superior Court Case No. 13 CECG 01674

Hearing Date: August 26, 2015 **(Dept. 501)**

Petition: Confirm Arbitration

Tentative Ruling:

To lift the stay imposed on November 11, 2013. To grant the petition to confirm the arbitration pursuant to CCP § 1286 and to enter judgment consistent with award; i.e., "Claimants shall recover nothing ($0.00) by this action." To deny the request for costs.

Explanation:

On August 2, 2013, Defendant A&M Auto filed a petition to compel arbitration. Opposition and a reply were filed. A hearing was held on September 5, 2013 and the matter was taken under advisement by the Court. On November 11, 2013, the matter was taken out from under advisement and the petition was granted. The case was ordered stayed while the matter was pending.

On December 16 and 17, 2014, a live hearing was held before John Lautsch, a neutral arbitrator under the auspices of the American Arbitration Association. On January 25, 2015, an award was made by which the Claimants (Plaintiffs DePauw) took nothing. No attorney's fees nor costs were awarded pursuant to CCP § 1284.3(a). It is unknown when the award was served. On April 8, 2015, A&M Auto filed a Petition to confirm the arbitration award. No request to vacate or correct the award was filed pursuant to CCP § 1288.2.

Unless a petition to correct or vacate the award has been timely filed, the court must render a judgment confirming the arbitrator's award. [See CCP § 1286—"the court shall confirm the award as made …"; see also *Valsan Partners Limited Partnership v. Calcor Space Facility, Inc.* (1994) 25 CA4th 809, 818—no authority to alter terms of award absent petition to correct; *Weinberg v. Safeco Ins. Co.* (2004) 114 CA4th 1075, 1083-1084] Therefore, the award will be confirmed.

A&M Auto also filed a Memorandum of Costs seeking an award of costs in the amount of $695. However, a court may *not* award costs in the judicial proceeding that should have been awarded, if at all, in the arbitration. [*Corona v. Amherst Partners* (2003) 107 CA4th 701, 706—court declined to award arbitration fees and costs that arguably could have been awarded in arbitration if requested] Costs incurred in judicial proceedings to **enforce** an arbitration award (petition to compel, etc.) are

recoverable by the prevailing party as a matter of right. [CCP § 1293.2; *Austin v. Allstate Ins. Co.* (1993) 16 CA4th 1812, 1815-1816; *Otay River Constructors v. San Diego Expressway* (2008) 158 CA4th 796, 805-808] Accordingly, the Court could award the filing fee of the Petition. But, the Court's records indicate that the Petitioner was not charged a filing fee. As a result, no costs will be awarded.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 8/19/15 .

(Judge's initials) (Date)

Tentative Rulings for Department 502

(29)

Tentative Ruling

Re: ***Gordon Panzak, et al. v. Sharon Panzak, et al.***
Superior Court Case No. 14CECG00557
Hearing Date: **August 26, 2015 (Dept. 502)**
Motions: Defendants Panzak, in all capacities, Clifft, and Panzak III's general and special demurrers to Plaintiff's second amended complaint
Defendants Shekoyan and Paloutzian's general and special demurrers to Plaintiff's second amended complaint

Tentative Ruling:

To sustain Defendants Panzak, Clifft, and Panzak III's special demurer for uncertainty. (Code Civ. Proc. §430.10(f).) To sustain Defendants Panzak, Clifft, and Panzak III's general demurrer for failure to state facts sufficient to constitute a cause of action, with leave to amend. (Code Civ. Proc. §430.10(e).)

To sustain Defendants Shekoyan and Paloutzian's special demurer for uncertainty. (Code Civ. Proc. §430.10(f).) To sustain Defendants Shekoyan and Paloutzian's general demurrer for failure to state facts sufficient to constitute a cause of action, with leave to amend. (Code Civ. Proc. §430.10(e).)

Plaintiff has 20 days from service of the minute order to file a third amended complaint that alleges sufficient facts to support all causes of action. (Code Civ. Proc. §472a(c).) All new allegations in the second amended complaint are to be set in **boldface type**.

Explanation:

Both sets of defendants demur on the basis of uncertainty, complaining that the complaint is plead in such a way that they are unable to determine which causes of action are directed against which defendants. The point is well taken. Each cause of action incorporates all of the previous allegations of the complaint and each is plead on behalf of plaintiff, in all of his different capacities, against all defendants. Moreover, the pleading alleges a series of facts, many of which are improper in a complaint, and yet fails to allege the legal elements of any of the causes of action. Thus, the demurrer for uncertainty is sustained as to each cause of action and as plaintiff in each of his capacities and each defendant, with leave to amend. Though leave to amend has been granted, plaintiff has now had three opportunities to allege, in clear and concise fashion, his claims for relief. Patchwork amendment will not suffice, as the pleading needs a complete revision. Leave to amend will not be granted indefinitely.

Plaintiff has also not fully alleged the elements of any of his causes of action, nor has he properly alleged compliance with the requirements of Civil Code section

1714.10, subdivision (c)(1) or (2). Finally, it is unclear at this time which, if any, of Plaintiff's causes of action are time-barred because Plaintiff has failed to include the dates on which he alleges many of the acts in his causes of action occurred, and states that he was unaware of certain acts until 2014, but does not plead the discovery rule exception to the general rule that an action accrues at the time the appreciable harm occurs..

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DSB on 8-24-15.
(Judge's initials) (Date)

(27) **Tentative Ruling**

Re: ***Rodriguez v. Gottfried***
Superior Court Case No. **14CECG02687**

Hearing Date: **August 26, 2015 (Dept. 502)**

Motion: To Quash and Stay Deposition of Blaze Michael Gottfried

Tentative Ruling:

To continue the motion until Thursday October 8, 2015 in Dept. 502 based upon moving counsel's assertions that the criminal case will conclude by September. (Dec. of Bonnie N. Eftekar, ¶ 2.) If the criminal matter is not concluded by the continued date, moving counsel shall file and serve a further declaration to this court explaining the criminal case status. Said declaration shall be filed not later than October 1, 2015.

Explanation:

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DSB on 8-24-15 .
(Judge's initials) (Date)

Tentative Rulings for Department 503

(24) **Tentative Ruling**

Re: ***Brown v. Silver Lake Apt.***
Court Case No. 15CECG01598

Hearing Date: **August 26, 2015 (Dept. 503)**

Motion: 1) Defendants' Demurrer to Complaint
2) Defendants' Motion to Strike

Tentative Ruling:

To strike, *sua sponte,* plaintiff's "Motion to Strike Demurrer."

To sustain the demurrers to each cause of action based on uncertainty and on failure to state facts sufficient to constitute a cause of action, with leave to amend as to all causes of action *except* as to the cause of action for "Discharge in violation of Public Policy," which is sustained without leave to amend.

To grant defendants' motion to strike references in the complaint to "color of the law" or "color of state law" in Paragraphs 2 and 10, without leave to amend. To grant the motion to strike the request for punitive damages as set forth at Paragraphs 39 through 45, with leave to amend. To deny the motion to strike each cause of action on the grounds that they are subject to general demurrer, as this is an improper basis for a motion to strike.

Explanation:

Plaintiff's "Motion to Strike Demurrer":

Plaintiff failed to calendar her motion, and furthermore the proof of service attached to the "Declaration of Mary Alice Brown in Support of Motion to Demurrer to Complaint" does not indicate she served her motion on defendants (it appears to indicate service of *opposition to defendant's demurrer*). Thus, it was not properly filed or served and is subject to being stricken.

However, defendants' motions *were* filed after plaintiff requested entry of their defaults, so the court has considered whether they are also subject to being stricken, *sua sponte*. The court takes judicial notice of the fact that the clerk denied entry of the defaults. Therefore, there is no basis to strike the defendants' motions, and the court has instead considered their merits.

Demurrers to each cause of action:

- Breach of Oral and Written Contract

To allege a breach of contract (whether written or oral, or part written and part oral) plaintiff must allege the following elements: 1) the contract, 2) plaintiff's performance or excuse for nonperformance, 3) defendant's breach, and 4) the

resulting damages to plaintiff. (*McDonald v. John P. Scripps Newspaper* (1989) 210 Cal.App.3d 100, 104, *as modified (May 10, 1989)*.) Plaintiff fails to clearly allege the contract(s) and its (or their) terms. If *separate* contracts are alleged (*e.g.*, one oral and one written), they should be stated as separate causes of action. If the contract is *part* oral and *part* written, this may be stated in one cause of action, but the terms of the contract must be clearly alleged. As currently stated, the cause of action is uncertain as to what type of contract (or contracts) is (or are) actually stated, and what the terms of these contracts are.

Further, plaintiff appears to allege three separate "breaches" (failure to intercede when she was harassed; failure to repair her apartment; and raising her rent), but she does not indicate where (in what contracts) defendants obligated themselves to do (or not do) these actions. The only "oral agreement" she alleges, at Paragraph 25, is that "the safety of person and property was a concern." However, agreeing that safety is a "concern" does not state an *agreement or promise* by defendants to do anything, so this fails to allege an oral contract. As for the documents attached as exhibits, the letters regarding lease renewal contain *offers* to keep plaintiff's rent at $551 per month, and Exhibit A (the lease agreement) appears to indicate that plaintiff accepted this offer as to the *first* such offer. However, she fails to allege she accepted the *second* offer so as to obligate defendant Silver Lake Apartments to not raise her rent. In other words, she fails to allege any written contract resulting from this offer. She also fails to allege her performance or excuse for performance under any contract, and how she was damaged.

- Breach of "Implied Cont[ract]"

While defendants appear to It assume plaintiff is attempting to allege breach of an *implied contract* with this cause of action (i.e., one implied-in-fact by the parties' actions), it seems clear this is actually meant to be a cause of action for breach of the covenant of good faith and fair dealing: plaintiff mentions the duty "to act *fairly and in good faith* towards plaintiff" (emphasis added) and says defendants "covenanted" to give plaintiff "full cooperation."

The covenant of good faith and fair dealing is implied in every contract and requires that neither party do anything that will injure the right of the other to receive the benefits of the contract. (*Cates Construction, Inc. v. Talbot Partners* (1999) 21 Cal.4th 28, 43.) The elements of a cause of action for breach of the implied covenant of good faith and fair dealing are: (1) That plaintiff and defendant entered into a contract; (2) That plaintiff did all, or substantially all of the significant things that the contract required plaintiff to do or, that plaintiff was excused from having to do those things]; (3) That all conditions required for defendant's performance had occurred; (4) That defendant unfairly interfered with plaintiff's right to receive the benefits of the contract; and (5) That plaintiff was harmed by defendant's conduct. [Judicial Council Of California Civil Jury Instruction 325.)

Plaintiff fails to identify the contract at issue. She fails to allege that she did all or substantially all of what was required of her under the contract, or an excuse from those requirements. She fails to allege all conditions for defendants' performance had

occurred. She fails to allege *how* defendants unfairly interfered with her receiving benefits of the contract. Merely incorporating all prior allegations does not resolve this, but only subjects the claim to uncertainty. She fails to allege *how* she was harmed by defendants' conduct.

- Breach of Fiduciary Duty

A cause of action for breach of fiduciary duty must allege: 1) the existence of a fiduciary duty; 2) breach of that duty; and 3) damages proximately caused by that breach. (*Mosier v. Southern California Physicians Ins. Exchange* (1998) 63 Cal.App.4th 1022, 1044.)

Plaintiff fails to adequately allege that defendants (any of them) owed her a fiduciary duty. The normal relationship between a landlord and tenant is contractual in nature, and a contractual relationship alone does not create a fiduciary relationship. A fiduciary relationship is not created simply because one places his or her trust in another. (*Zumbrun v University of S. Cal.* (1972) 25 Cal.App.3d 1, 13. *Ampuero v. Luce* (1945) 68 Cal.App.2d 811, 819.) The bare allegation that defendants assumed a fiduciary relationship is a conclusion of law, which is not accepted as true on demurrer. (*Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 517.) No *facts* are stated which support such a conclusion. The demurrer to this cause of action is sustained, with leave to amend *only* if plaintiff can state facts supporting the existence of a fiduciary relationship.

- Negligence

Even though the caption of the complaint identifies a cause of action for negligence, no such cause of action is stated. Thus, demurrer for both uncertainty and for failure to state facts sufficient to constitute a cause of action must be sustained. Plaintiff should be given leave to amend in the event she can state such a cause of action.

- Discharge in Violation of Public Policy

A cause of action for "discharge in violation of public policy" is a common law cause of action also referred to as a "Tameny Claim." The elements of this cause of action are: 1) an employer-employee relationship; 2) termination or other adverse employment action; 3) termination was a violation of public policy (i.e., a nexus between the termination and the employee's protected activity; 4) proximate cause; and 5) damages. (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 172.)

It is clear from all of the allegations of the complaint that plaintiff is not claiming an employer-employee relationship existed between herself and defendants, or that she was wrongfully terminated from her employment. No such facts are alleged. Rather, she alleges a landlord-tenant relationship, which will not support this cause of action. Demurrer is sustained, without leave to amend.

- Intentional Infliction of Emotional Distress

The elements of a claim for Intentional Infliction of Emotional Distress (IIED) are: 1) outrageous conduct by the defendant with intention to cause or reckless disregard of the probability of causing emotional distress; 2) severe emotional suffering; and 3) actual and proximate causation of emotional distress. (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494.) This tort "does not extend to 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." (*Id.* at p. 496.) Even allegations of *intentionally tortious conduct* is not sufficient unless the conduct is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." (*Id., quoting from* Restmt.2d Torts, § 46, comment d.)

Here, the allegation that "defendants" promised not to raise the rent and then apparently reneged on that agreement (i.e., by stating the rent would be raised $17, i.e., from $551 to $568) is not sufficiently extreme and outrageous conduct to sustain a claim for intentional infliction of emotional distress. To the extent plaintiff intended to implicate any further acts of defendants by a general incorporation of all prior paragraphs into this cause of action, this only serves to make the cause of action subject to demurrer for uncertainty. Demurrer is sustained, with leave to amend only in the event plaintiff can allege intentional behavior which is sufficiently outrageous to sustain this claim.

- Defamation of Character and Slander

As with the negligence cause of action, this is listed in the caption of the complaint, but no defamation cause of action is included. Thus, both the general demurrer and the special demurrer for uncertainty must be sustained. However, since plaintiff makes several allegations regarding "slander and defamation" in the "general facts" section (see, *e.g.,* ¶¶ 7, 17, 18, 19), leave to amend is allowed.

Motion to Strike

The motion to strike references in the complaint to "color of the law" or "color of state law" in Paragraphs 2 and 10 is proper. Such references are generally included where plaintiff is attempting to allege a defendant is liable for acts normally attributable only to the State, such as in bringing a charge of a violation of constitutional rights. (*Lugar v. Edmondson Oil Co., Inc.* (1982) 457 U.S. 922, 937.) However, none of the causes of action plaintiff has raised make this a material fact to allege, so these phrases are irrelevant and improper matter and subject to being stricken.

Likewise, the request to strike the claim for punitive damages as set forth in Paragraphs 39 through 45 is proper: the facts stated do not give rise to a claim for intentional infliction of emotional distress, so there is no support for the request for punitive or exemplary damages; no malice, oppression or fraud has been alleged. (*Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 894.) Leave to amend is granted only if plaintiff can allege sufficient facts to support a claim for punitive damages.

The rest of this motion seeks to "strike" each cause of action on the same grounds as argued in the demurrer; i.e., that these counts fail to state facts sufficient to constitute causes of action. In other words, defendants argue these causes of action should be stricken because they are subject to demurrer. This is an improper basis for a motion to strike. The proper function of a motion to strike is to reach defects or objections to pleadings which are *not* challengeable by demurrer. (*Pierson v. Sharp Memorial Hospital, Inc.* (1989) 216 Cal.App.3d 340, 343—finding a defective motion to strike could be deemed a motion for judgment on the pleadings.) Defendants have made these same arguments on demurrer and the issues have been dealt with above. This portion of the motion to strike is denied.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 8-25-15 .
(Judge's initials) (Date)